

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

CIVIL ACTION: 1:01-CV-12257-PBS

THIS DOCUMENT RELATES TO:

Judge Patti B. Saris

State of California, et al. v.
Abbott Laboratories, et al.,
CIVIL ACTION NO. 1:03-CV-11226-PBS

JOINT MOTION FOR ENTRY OF SCHEDULING ORDER

Plaintiffs Ven-A-Care of the Florida Keys, Inc. ("Ven-A-Care") and the State of California (the "State", collectively with Ven-A-Care, "plaintiffs") and Defendants Abbott Laboratories ("Abbott") and Wyeth Inc. and Wyeth Pharmaceuticals Inc. (collectively, "Wyeth") respectfully move this Court for entry of the attached proposed scheduling order to govern briefing on the plaintiffs' motion for remand in the above-captioned action. In support of this joint motion, the parties state as follows:

On July 28, 1998, Ven-A-Care filed an action under the *qui tam* provisions of the California False Claims Act. The Complaint was filed under seal in the Superior Court of the State of California for the City and County of San Diego and was later amended. The case, styled *The State of California ex rel. Ven-A-Care of the Florida Keys, Inc., a Florida*

Corporation, by and through its principal officers and directors, Zachary T. Bentley and Mark T. Jones v. Abbott Laboratories [and other co-defendants whose identity is unknown to Abbott because the names have been redacted]; Wyeth Pharmaceuticals Inc.; Wyeth Inc., was subsequently transferred to the Superior Court of the State of California for the County of Los Angeles. The State intervened and filed a complaint against Abbott and Wyeth on January 7, 2003. On March 31, 2003, Abbott removed the action to the United States District Court for the Central District of California, and Wyeth consented. On April 14, 2003, plaintiffs filed a motion to remand. Defendants filed a preliminary opposition to the motion to remand on May 29, 2003, but reserved the right to brief the remand issue fully when a hearing was set on plaintiffs' motion.

The above-captioned case, including the plaintiffs' motion for remand, is now pending before this Court as part of MDL No. 1456 pursuant to a June 30, 2003 order by the Judicial Panel on Multidistrict Litigation. On August 7, 2003, counsel for the State sent a letter to this Court requesting a hearing on plaintiffs' motion to remand, and this Court subsequently determined to hear the motion on September 18, 2003. The parties thereafter conferred to establish an appropriate briefing schedule to accommodate this hearing date. As a result, the parties agreed to re-brief the motion for remand on the schedule set forth in the attached proposed scheduling order. Under this schedule, briefing will be complete on September 12, 2003.

The entry of this agreed order will promote judicial efficiency and economy. The briefing that currently is before the Court as part of the case file from the District Court for the Central District of California should be supplanted for several reasons. First, that briefing addresses the issues under Ninth Circuit law, whereas this Court will apply First Circuit law in

deciding plaintiffs' motion. Second, the existing briefing was prepared before this Court's recent decision on jurisdiction and removal in MDL No. 1456. New briefing will permit the parties to tailor their arguments in accordance with this Court's prior decision. Third, the prior briefing on this motion also addressed other issues then relevant to the case, such as the defendants' motion for stay and the defendants' pending request for transfer to MDL No. 1456. By briefing the motion anew, the parties eliminate unnecessary passages and reduce the burden on this Court.

The parties have agreed that the submission of new briefs by the parties on this motion will not prejudice the plaintiffs with regard to the timeliness of the motion to remand. Rather, the parties agree that the plaintiffs' motion for remand will continue to be considered filed as of April 14, 2003 for purposes of determining the timeliness of that request for relief.

Accordingly, the parties respectfully request that this Court enter the attached proposed order. The plaintiffs and Wyeth have authorized counsel for Abbott to sign this joint motion on their behalf.

DATED: August 21, 2003

Respectfully Submitted,



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Counsel for Defendant Abbott Laboratories

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2003, I, R. Christopher Cook, an attorney, caused a true and correct copy of the foregoing JOINT MOTION FOR ENTRY OF SCHEDULING ORDER AND [PROPOSED] SCHEDULING ORDER to be served on all counsel of record, via VERILAW, pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

By:


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